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No. 83-310

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

WILLIAM RUZICKA,

Petitioner,

v.

GENERAL MOTORS CORPORATION,

and

LOCAL 166 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF IN OPPOSITION FOR UAW LOCAL 166

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether an intent finding, made by the District Court after trial on the second remand, that the Local Union actually relied on the prevailing practice of freely granting extensions on grievance deadlines, was properly affirmed on appeal as not clearly erroneous?

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BRIEF IN OPPOSITION FOR UAW LOCAL 166

Local 166 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), by counsel, respectfully pray that the Court *deny* the Petition for Writ of *Certiorari*.

OPINIONS BELOW

The opinion is reported at: *Ruzicka v. GMC & UAW Local 166*, 707 F.2d 259 (6th Cir. 1983) (*per* Krupansky, J.), *aff'g* 519 F. Supp. 893 (E.D. Mich. 1981).[1] The earlier history of the litigation is outlined in the margin.

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[1] All decisions below are reprinted in the Appendix to the Petition, Pet. App. 31-131.

COUNTERSTATEMENT OF THE CASE

In twelve years of litigation, this one has been through, *inter alia*, two trials, two remands, and three trips to the Sixth Circuit.[2]

Ruzicka was discharged by General Motors on March 31, 1970, for being drunk on the job, and using abusive language to a member of management. UAW Local 166 filed a grievance, and processed it through the first two

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[2] *Ruzicka v. GMC, UAW & Local 166*, 336 F. Supp. 824 (E.D. Mich. 1972), denial of motion to dismiss, Pet. App. 31-36; —— F. Supp. —— (E.D. Mich. 1973), 85 LRRM 2419, denial of motion for summary judgment; —— F. Supp. —— (E.D. Mich. 1973), 86 LRRM 2030, judgment for defendants at close of plaintiff's case, Pet. App. 41-47.

The first appeal, 523 F.2d 306 (6th Cir. 1975), Pet. App. 48-66, reversed as to GM and Local 166, but affirmed as to the International Union on the fair representation issue, while, on the UAW's cross-claim against GM to require arbitration, the Circuit ordered arbitration, with the District Court retaining jurisdiction. The Circuit denied rehearing, 528 F.2d 912 (6th Cir. 1975), Pet. App. 67-69, with a concurrence and two dissents.

On the first remand, the District Court sent the grievance to arbitration, but only the substantive merits of the grievance. The arbitrator held that Ruzicka should only have received a 30-day penalty, 96 LRRM 2838. After trial, the District Court held against the Local on the fair representation claim, and against GM for breach of contract, confirming the arbitration award. Pet. App. 69-105.

On the second appeal, the Circuit reversed, and remanded for determination of the "narrow issue" of "whether there was, in fact, actual reliance by Panter on other union officials on the prevailing practice of freely granting extensions." 649 F.2d 1207, 1211 (6th Cir. 1981), Pet. App. 106-118, *esp.* 114-115.

On the second remand, after trial, the District Court found that intent, and that reliance. Finding, then, no breach of the duty of fair representation, the trial Court held GM would not be liable on the contract claim, notwithstanding the earlier arbitration award. 519 F. Supp. 893, 896-7 (E.D. Mich. 1981), Pet. App. 118-127.

On the third appeal, the Sixth Circuit affirmed. 707 F.2d 259 (6th Cir. 1983).

Steps of the grievance procedure. Pet. App. 118-119. The Local's Charles Panter failed to make a timely exchange of "statements of unadjusted grievance," which would have taken the grievance to the next Step. After the deadline had passed, GM refused to consider the grievance on the merits, insisting it was no longer timely, Pet. App. 119.

On the second remand, the District Court found, after trial on the issue, that Panter failed to do so in reliance on the customary non-enforcement of exchange deadlines at the plant. Pet. App. 122. Finding this intent explained Panter's conduct, the District Court held there was no "arbitrary" conduct under *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Pet. App. 123.

On appeal, the Sixth Circuit, in its third decision, affirmed, holding that the intent finding was not clearly erroneous, and that the legal issues which Ruzicka sought to reargue has been "law of this case for over ten years." 707 F.2d 259, 261 (6th Cir. 1983); Pet. App. 128-131, *esp.* 129. This Petition followed.

ARGUMENT

The confused history of this litigation teaches only that an overly-quick conclusion, based on an immature record, is a sin which will be revisited on subsequent generations of one's Circuit. It does not suggest hopeless confusion in the federal judiciary on these issues, or anything like it. Such debate as exists, we respectfully submit, is the child of the fact-specific way in which the settled *Vaca*[3] standard must be applied in complicated labor relations settings.

Refined by a decade of litigation, the instant case came down to a *single* factual point—what was Panter's intent? Did he rely on the "customary non-enforcement of exchange deadlines?" After hearing three witnesses, and reviewing the earlier evidence, the trial court settled the point in the Local's and GM's favor.

This is not a particularly interesting—let alone important—question of *any* sort. It isn't even a question of law. It is a question of fact, as this Court settled in *Pullman-Standard v. Swint*, 456 U.S. 273, 287-288 (1982), a short while ago.

Even if we were to back this litigation up ten years, as Petitioner suggests, there is no split of the Circuits on the underlying *legal* issues.

The Ninth Circuit, cited by Petitioner, Pet. 14 & 17, comfortably distinguishes *Ruzicka* as a case involving reliance on a loose past practice at the plant. *Dutrisac v. Caterpillar Tractor Co. & IAMAW*, —— F.2d —— (9th Cir. 1983), 113 LRRM 3532, 3534 n.1, 98 CCH L.C. ¶ 10,318.

As for the Fourth Circuit, Pet. 17, the Sixth Circuit's *most* recent fair representation case, *Journeymen Pipe*

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[3] *Vaca v. Sipes*, 386 U.S. 171, 190 (1967), down through last Term's *Bowen v. U.S. Postal Service*, —— U.S. —— (1983), 74 L.Ed.2d 402, 103 S. Ct. 588, and *DelCostello v. IBT*, —— U.S. —— (1983), 76 L.Ed.2d 476, 103 S. Ct. 2281.

Fitters Local 392 v. NLRB, 712 F.2d 225 (6th Cir. 1983), expressly *relies on* the Fourth Circuit's leading "arbitrariness" case, *Griffin v. UAW*, 469 F.2d 181, 183 (4th Cir. 1974). 712 F.2d at 228.

We do not respond to Questions III through V in the Petition, involving the status of the arbitration award. We need only confirm the accuracy of the Circuit's holding that the UAW, as the losing cross-plaintiff, did *not* appeal to the adverse District decision. Pet. App. 131. This was a considered decision, based on legal judgment, not an omission. Ruzicka was *not* a party to the cross-claim, and refused to join it. He could easily have done so.

CONCLUSION

For the foregoing reasons, the Court should *deny* the Petition.

Respectfully submitted,

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